

**QUARTERLY UPDATE
TO THE LEGISLATURE**

**IMPLEMENTATION OF THE FEDERAL
AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009**

**Quarterly Update #1
October 2008 through June 2009**

Department of Health Care Services

**DEPARTMENT OF HEALTH CARE SERVICES
QUARTERLY UPDATE TO THE LEGISLATURE**

TABLE OF CONTENTS

I.	Purpose of the Update	3
II.	Temporary Increase in Federal Medical Assistance Percentage.	3
III.	Temporary Increase in Disproportionate Share Hospital Allotment.....	4
IV.	Extension of Moratoria on Certain Medicaid Final Regulations	5
V.	Extension of Transitional Medical Assistance	5
VI.	Extension of Qualifying Individual Program.....	6
VII.	Protections for Indians under Medicaid	6
VIII.	Health Information Technology Incentives for Medicaid Providers.....	8
IX.	Income Disregards	9

I. PURPOSE OF THE UPDATE

Under the State Budget Act of 2009, the State Department of Health Care Services (DHCS) is to provide the Legislature with a quarterly update regarding the implementation of the federal American Recovery and Reinvestment Act of 2009 (ARRA) in the Medi-Cal program. The updates shall reflect key issues and fiscal data. This is the first quarterly update, which covers the period from October 1, 2008, through June 30, 2009. Updates, as well as a brief description of ARRA requirements, are provided below on each section of ARRA that impacts the Medi-Cal program.

II. TEMPORARY INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE (FMAP) INCREASE – *ARRA Division B Section 5001*

For the period October 1, 2008, through December 31, 2010, ARRA provides state Medicaid programs with an across-the-board FMAP increase of 6.2 percentage points and an additional FMAP increase based on states' unemployment rates. California will receive an 11.59 percent FMAP increase which includes a 6.2 percent across-the-board increase and a 5.39 percent increase for unemployment.

Key Fiscal Data:

- For the period October 1, 2008, to June 30, 2009, DHCS received three quarterly award letters for increased FMAP under ARRA, which totaled \$3,150,775,756. The amount awarded through these grant letters reflects a projection of quarterly Medicaid expenditures and can be increased to the extent states' actual expenditures in a quarter are higher than expected. Because the grant award amount is based on an estimate of quarterly spending, it will not match actual expenditures. Typically the Medi-Cal program does not fully expend its grant award.
- For the period October 1, 2008, to June 30, 2009, DHCS claimed a total of \$2,753,245,248.30 in increased FMAP under ARRA.

Status Update:

- The Centers for Medicare & Medicaid Services (CMS) provided DHCS with letters regarding the grant awards for the 1st, 2nd, and 3rd quarters, email instructions on how to complete required CMS forms for accounting purposes, and on March 25, 2009, a Frequently Asked Questions (FAQ) document.
- CMS distributed the increased FMAP for quarters 1 and 2 of federal fiscal year 2009, but DHCS could not draw down the funds until a statute change restored eligibility provisions as they were on July 1, 2008. On March 27, 2009, Governor Schwarzenegger signed Senate Bill (SB) X3 24 (Alquist), which restored eligibility to the July 1, 2008, levels by eliminating mid-year status reporting for children and restoring 12 month continuous eligibility.
- On March 27, 2009, DHCS released ***All County Welfare Director's Letter (ACWDL) 09-15***, which rescinded the mid-year status reporting and

restored the continuous eligibility requirements to comply with the ARRA FMAP requirements regarding eligibility provisions. This was necessary for DHCS to draw down the available federals for the increased FMAP.

- On June 17, 2009, CMS released State Medicaid Director (SMD) Letter 09-003, ARRA #3, providing guidance on the provisions of ARRA that impact state Medicaid programs. This guidance was an update to the FAQs previously released on March 25, 2009 by CMS.
- Pursuant to Senate Bill (SB) X3 6 quarterly, chaptered in February 2009, the State Supplementary Payment (SSP) program was reduced by 2.3 percent effective on July 1, 2009. Effective July 1, 2009, DHCS will amend its Medicaid state plan to implement eligibility changes that will reverse the effects of the SSP program reduction on the eligibility of applicants or beneficiaries of certain Medi-Cal programs.
- By September 30, 2011, states will have to report to the HHS Secretary regarding how additional federal funds were spent. CMS is in the process of preparing guidance on what information needs to be included in this report.

Prompt Payment for FMAP Increase: Temporarily extends federal mandate requirements for prompt payments to nursing facilities and hospitals, effective June 1, 2009. Prompt payments must be met on a daily basis for the applicable providers.

Status Update:

- DHCS is making systems changes to modify the claims processing system (CA-MMIS) to implement prompt payment and is creating reports to identify claims that do not meet the payment requirement. Modifications are also being made to the CMS 64 Federal Reporting System to demonstrate compliance with the prompt payment provisions. These changes are scheduled for completion by September 30, 2009 and are based on CMS' final draft guidance to states dated May 29, 2009. In the interim, DHCS is tracking claims on a daily basis to determine compliance with the prompt payment requirements and will report to the HHS Secretary on a quarterly basis the compliance with these provisions.
- On July 30, 2009, CMS released SMD Letter #09-004, ARRA #4, providing guidance on the ARRA provisions related to prompt payment.

III. TEMPORARY INCREASE IN DISPROPORTIONATE SHARE HOSPITAL (DSH) ALLOTMENT – ARRA Division B Section 5002

ARRA provides a temporary increase of 2.5% in FY 2009 and 2.5% in FY 2010 of additional federal funding to the existing DSH Allotment, which is distributed to public and private hospitals that meet certain criteria for the available funding.

Key Fiscal Data:

- California's current DSH allotment is \$1,100,730,067.
- Current DSH expenditures are \$985,626,035.

- California's increased Medicaid DSH allotment for FY 2009 equals \$26,847,075.

Status Update:

- States must request the additional funds from CMS as part of their quarterly Medicaid budget request and the funds will be distributed as separate ARRA DSH grants.
- DHCS expects to expend its current DSH allotment by Fall 2009.

IV. EXTENSION OF MORATORIA ON CERTAIN MEDICAID FINAL REGULATIONS – ARRA Division B Section 5003

ARRA extends through June 30, 2009, the moratorium on four finalized Medicaid regulations pertaining to targeted case management, school-based services, health care provider taxes, and outpatient hospital services.

ARRA expresses intent that CMS should not promulgate final regulations for graduate medical education, cost limit for public providers, and rehabilitative services. Lastly, ARRA bars enforcement of the Outpatient Hospital Services regulation retroactive to December 8, 2008.

Status Update:

- On June 30, 2009, CMS published a final rule rescinding in full the school-based services regulation and the outpatient hospital services regulation and partially rescinding the targeted case management regulation.
- On June 30, 2009, CMS published a final rule delaying enforcement of certain provisions of the health care-related taxes regulation from July 1, 2009 to June 30, 2010.

V. EXTENSION OF TRANSITIONAL MEDICAL ASSISTANCE (TMA) – ARRA Division B Section 5004

ARRA extends the TMA program, known as Transitional Medi-Cal (TMC) in California, until December 31, 2010. TMA provides a period of continuing coverage for families who lose Medi-Cal eligibility due to increased earned income. ARRA also provides states two new eligibility options: (1) change the initial 6 month eligibility period to 12 months; and (2) waive the requirement that beneficiaries have to have received Medicaid in at least 3 of the last 6 months period to qualify for TMA.

Status Update:

- On March 13, 2009, DHCS release **ACWDL 09-13**, which extended the TMA program through December 31, 2010.
- On April 6, 2009, CMS released SMD Letter 09-002, ARRA #1, regarding the requirements for extending the TMA program and the State Plan Amendment (SPA) template.

- DHCS will be required to report to the HHS Secretary information about average monthly enrollment and average monthly participation rates for adults and children under TMC and of the number and percentage of children who become ineligible for medical assistance under this section whose medical assistance is continued under another eligibility category or who are enrolled under the State's child health plan under title XXI, Healthy Families Program in California.

VI. EXTENSION OF THE QUALIFYING INDIVIDUAL (QI) PROGRAM – ARRA *Division B Section 5005*

ARRA extends the QI program one year through December 31, 2010, and provides additional funding for calendar year 2010. The QI program is one of the Medicare Savings Programs developed to pay all of the Medicare Part B premiums for eligible individuals. Certain low-income individuals who are aged or have disabilities, as defined under the Supplemental Security Income (SSI) program, and are eligible for Medicare, are also eligible to have their Medicare Part B premiums paid for by Medicaid under the Medicare Savings Program (MSP). Eligible groups include Qualified Medicare Beneficiaries (QMBs), Specified Low-Income Medicare Beneficiaries (SLMBs), and Qualifying Individuals (QIs). QMBs have incomes no greater than 100% of the federal poverty level (FPL) and assets no greater than \$4,000 for an individual and \$6,000 for a couple. SLMBs meet QMB criteria except that their incomes are greater than 100% of FPL but do not exceed 120% FPL. QIs meet the QMB criteria except that their income is between 120% and 135% of FPL. Further, they are not otherwise eligible for Medicaid.

Status Update:

- On March 10, 2009, DHCS released **ACWDL 09-11**, which extended the QI program through December 31, 2010.

VII. PROTECTIONS FOR INDIANS UNDER MEDICAID – ARRA *Division B Section 5006*

Premiums and Cost Sharing: ARRA prohibits the use of premium or cost sharing provisions for Indian beneficiaries who receive Medicaid services directly from Indian Health Service, an Indian Tribe, a tribal organization, urban Indian organization or through referral under contract health service. ARRA also prohibits the reduction of payments due to these providers by the amount of cost sharing that would have otherwise applied to an Indian.

Status Update:

- On May 29, 2009, CMS released a Tribal Leader letter, ARRA #2, regarding ARRA protections for American Indian and Alaska Native communities.

Eligibility Provisions: ARRA exempts four classes of property from resources in determining Medicaid eligibility determinations under Medicaid for Indians.

Status Update:

- On May 15, 2009, DHCS released **ACWDL 09-26**, which effectuates and provides guidance to counties on the exemption of certain property for purposes of determining Medi-Cal eligibility of individuals who are American Indians.
- A regulation change will be pursued for these provisions.

Managed Care Provisions: ARRA requires that Indians enrolled in a non-Indian Medicaid managed care entity (MCE) with an Indian provider participating as a primary care provider within the plan network be allowed to choose the Indian provider as the primary care provider when the Indian is otherwise eligible to receive services from the provider and the Indian provider has the capacity to provide the primary care services.

Status Update:

- DHCS determined that existing Medi-Cal managed care contracts require amendments to comply with Section 5006 of ARRA. This section is effective on July 1, 2009.
- On June 12, 2009, DHCS released **All Plan Letter (APL) 09-009**, informing plans of the ARRA provisions related to Indians served in managed care and notifying plans that a contract amendment is required to comply with Section 5006 of ARRA. DHCS and the California Medical Assistance Commission will be providing contract amendments as soon as possible.
- Contract language has been developed and the contract process has begun. A “template” amendment containing the contract language was approved by CMS. Contract amendments are being made on a flow basis.

Solicitation of Advice under Medicaid: ARRA requires states to seek a SPA to include the requirement to seek advice from designees of Indian Health Programs and Urban Indian Organizations prior to any SPAs, waiver requests and proposals for demonstration projects likely to directly impact Indians, Indian Health Programs or Urban Indian Organizations. This provision may include the appointment of an advisory committee and of a designee of such Indian Health Programs and Urban Indian Organization to the medical care advisory committee advising the state on its state plan. The SPA must be submitted by Sept 30, 2009 to be effective July 1, 2009.

Status Update:

- DHCS is awaiting formal guidance from CMS on these provisions. In the interim, states may refer to the State Medicaid Director’s Letter released on July 17, 2001.

VIII. HEALTH INFORMATION TECHNOLOGY INCENTIVES FOR MEDICAID PROVIDERS – ARRA Division B Section 4101

The Health Information Technology for Economic and Clinical Health (HITECH) Act, a component of ARRA, provides investments in HIT infrastructure and Medicare and Medicaid incentives to encourage providers to use HIT and electronic health information exchange. The federal government is working to develop requirements and guidance for the incentive program. Based on available information, DHCS' implementation tasks will include:

Developing a Medi-Cal Incentive Program Plan

- Prepare an overall vision and high level plan for administration and use of the HITECH funds.
- Establish recommendations for state policies, procedures, technical needs and staffing levels required to operationalize the Medi-Cal Incentive Program.
- Obtain needed state resources to administer the incentive program by 2011.
- Develop five year plan of electronic health record (EHR) “meaningful use” criteria.

Developing a Medi-Cal Incentive Program Campaign

- Develop an awareness campaign and education for the provider and Medi-Cal beneficiary community.
- Develop goals and metrics for the Medicaid EHR incentive program, including the impact on quality, cost and service.
- Develop standards for the provider community to ensure their investments in electronic health records will meet meaningful use criteria.

Implementing the Medi-Cal Incentive Program

- Finalize standards and EHR system requirements for the provider community to ensure their investments in electronic health records meet meaningful use criteria.
- Develop and launch an awareness campaign and education for the provider and Medi-Cal beneficiary community.
- Certify providers who are eligible for the incentive payments.
- Identify and implement automated tracking mechanisms to ensure provider payment accuracy.
 - Administer and track incentive funding to Medi-Cal providers for adoption and meaningful use of electronic health records.
 - Develop and implement appropriate information systems required to facilitate incentive payments and make meaningful use of health information exchange.
- Provide technical assistance to providers, or IT extension programs, throughout the process of implementing EHRs.

- Pursue initiatives to encourage adoption of electronic health records (e.g. providing medication histories and formulary file for e-prescribing).

Status Update:

- DHCS is partnering with the California HealthCare Foundation (CHCF) to develop the Medi-Cal Incentive Program Plan. CHCF is providing the following support to DHCS:
 - Funding to hire a consulting firm to assist DHCS in devising a plan for the stimulus funds.
 - Matching funds for administrative costs associated with providing Medicaid incentive payments for providers that use EHRs.
- The Office of the National Coordinator for Health Information Technology (ONC) sought comments on the preliminary definition of “meaningful use” of EHRs. Comments on the draft description of meaningful were due by June 26, 2009. DHCS submitted comments through the California Health and Human Services Agency.
- DHCS is awaiting release by CMS of a State Medicaid Director letter that will provide formal guidance on implementation of the incentive provisions. Implementing regulations are due to be released by CMS by December 31, 2009.

IX. INCOME DISREGARDS - ARRA Division B Sections 2002 (UI Increase), 2201 (SSI Increase), 2202 (Special Government Employee Credit), 6432 (COBRA Benefit)

ARRA provides a one-time emergency payment of \$250 to Supplemental Security Income (SSI) recipients, Railroad Retirement recipients, and Veterans compensation or pension recipients. Payments are disregarded for the purpose of determining Medi-Cal eligibility. DHCS has issued ACWDLs to provide counties with guidance for implementing various payments and credits provided to individuals through ARRA.

Status Update:

- On April 27, 2009, DHCS released **ACWDL 09-21**, which provides guidance on the income disregard for certain government retirees who received an ARRA payment in the amount of \$250.
- On April 29, 2009, DHCS released two ACWDL’s which provide guidance on the treatment of the following two income disregards for individuals who received the following ARRA payments:
 - **ACWDL 09-22**: \$25 increase in unemployment compensation benefits.
 - **ACWDL 09-23**: \$250 Economic Recovery Payments.
- On June 18, 2009, DHCS released **ACWDL 09-30**, which provides guidance on the income deduction equal to the COBRA premium assistance reduction provided for under ARRA.

- On June 17, 2009, CMS released SMD Letter 09-003, ARRA #3, providing guidance to state Medicaid programs on disregarding these one-time payments for purposes of determining Medicaid eligibility.